

## ברייתא דתניא ראה עדים כולי –

***B'raisoh*; for we learnt, he saw witnesses, etc.**

### Overview

רב, who stated that there is (a משנה and) a ברייתא which supports רב, who maintains that the rule of פטור באו עדים ואח"כ is only if it was an admission that caused him to pay (like גנבתי), however if it was an admission that did not obligate him to pay (like טבחתי) the rule would be that he is חייב, if עדים came later. רב cited a ברייתא, which supports רב; namely the same ברייתא we had on the עמוד א<sup>1</sup>. Our תוספות explains why רב did not cite a משנה in support of רב.

תוספות asks:

תימה דאמאי לא הביא מתניתין<sup>2</sup> דפרק בתרא דשבועות<sup>3</sup> (דף מט,א ושם) -

– מסכת שבועות פרק of משנה in the last פרק **It is astounding! For why did he not cite the**

<sup>4</sup>תוספות responds to an anticipated difficulty:

דלעיל<sup>5</sup> ודאי ניחא שמביא ברייתא –

- משנה, and not the ברייתא, רב cites the **For previously it is certainly understood why** לפי שצריך לדקדק מסיפא<sup>6</sup> דרבי אלעזר ברבי שמעון דלא מתניא במתניתין דשבועות -

ברייתא, of this סיפא who is cited the **Since it was necessary to infer from רב"ש** אבל הכא<sup>7</sup> אין צריך לדקדק כלל מסיפא -

<sup>1</sup> The ברייתא states: ראה עדים שממשמשין ובאין ואמר גנבתי אבל לא טבחתי ולא מכרתי אינו משלם אלא קרן. The proof is from the fact that the ברייתא did not state a case by either גנבתי alone or טבחתי alone but rather גנבתי ולא מכרתי, to inform us that we require a הודאה המחייבת which is גנבתי.

<sup>2</sup> A משנה is more authoritative than a ברייתא.

<sup>3</sup> The משנה there (on the bottom of the עמוד) states verbatim the exact same case as the ברייתא mentioned in footnote # 1.

<sup>4</sup> Seemingly this same question can be asked on the גמרא previously, where רב challenged שמואל (who maintains מודה) from this very same ברייתא (בקנס ואח"כ באו עדים חייב). Why does תוספות not ask the same question there, why did רב ask from a ברייתא, when he could ask from a משנה?!

<sup>5</sup> On the 'א' עמוד.

<sup>6</sup> The dispute between רב ושמואל whether רב באו עדים is חייב or פטור, is only if the עדים actually testified. The ברייתא (as well as the משנה) does not state clearly whether the עדים (who were ובאין) actually testified. Therefore, רב could not prove his case from the רישא alone. However, we can infer from the ruling of רב"ש (who argues) in the סיפא that we are discussing a case where the עדים testified, so it is proof for רב. Therefore, רב could not cite the משנה (where there is no רב"ש) and needed to cite the ברייתא.

<sup>7</sup> Here in our גמרא we are not trying to prove that רב is correct, rather we are proving that the rule of רב is only by a הודאה, but not by a הודאה which carries no obligation; this can be derived from the משנה as well as the ברייתא (why mention both גניבה and טביחה), therefore we have a difficulty (only) here, why cite the ברייתא when we can prove it from the משנה just as well. See 'Thinking it over'.

**However here in our גמרא, there is no need to infer anything at all from the סיפא, so why did the גמרא cite the ברייתא instead of the משנה?**

answers: תוספות

**ויש לומר דאמתניתין דשבועות ידע שפיר דאיכא לדחויי -**

**And one can say; that regarding the משנה of שבועות, indeed רב אשי knew that one can dismiss the proof, by saying -**

**דהיא גופה קא משמע לן כדקאמר בסמוך<sup>8</sup> -**

**That the משנה is teaching us this rule itself, as indeed the גמרא shortly used this refutation -**

**אבל ברייתא שמוספת על המשנה סבור<sup>9</sup> דקא משמע לן דהודאה דטביחה לאו הודאה היא:**  
**However, regarding the ברייתא, which usually adds something to the משנה, it was assumed that the ברייתא is teaching that an admission of טביחה is not an admission, since he is not obligating himself.**

### **Summary**

The answer of קמ"ל היא גופא was obvious for the משנה, but not for the ברייתא, since presumably the ברייתא is adding something more to the משנה.

### **Thinking it over**

<sup>10</sup> Seemingly here too if not for the סיפא, we could say (in the משנה) that we are discussing a case where the עדים never came, and the reason the משנה states גנבתי ולא מכרתי that he only pays the קרן is to teach us that even though he stole the animal (as he admitted) and presumably he either slaughtered it or sold (for it is not before us), so one would thing that he should pay ד' וה' nevertheless the משנה states that he only pays the קרן. However, it is no proof that we require a המחייבת הודאה.

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<sup>8</sup> The גמרא there explains that he mentions the case of טבחתו אבל לא טבחתו to let us know that even if עדים came and said ד' וה', nevertheless since he said גנבתי and is exempt from כפל, he is also exempt from ד' וה'.

<sup>9</sup> רב אשי assumed that the ברייתא (which is verbatim of the משנה) is presumably teaching us something in addition to the גופא קמ"ל of the משנה, and that must be that we require a המחייבת הודאה. The גמרא responds however that the ברייתא is teaching us the same חידוש of the משנה, but it is adding (in the סיפא) the opposing view of רב"ש.

<sup>10</sup> See footnote # 7.